

HOUSE BILL 258

By Sargent

AN ACT to amend Tennessee Code Annotated, Title 67,
relative to taxation of retail sales of food and food
ingredients for human consumption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 1, Part 1, is amended by
adding the following language as a new section:

Section 67-1-114.

(a) On April 15 each year, the commissioner of the department of finance and administration, in consultation with the commissioner of revenue, shall certify the amount of surplus state revenue collected above budgeted estimates during the then current fiscal year and notify the governor, speaker of the senate, speaker of the house, state treasurer and commissioner of revenue of such amount. If such amount exceeds fifty million dollars (\$50,000,000), the rate of taxation on food and food ingredients shall be reduced by one-half percent (0.5%) on the next July 1.

(b) By June 15 in any year in which certified surplus state revenue exceeds fifty million dollars (\$50,000,000), the commissioner of revenue shall publish the rate of taxation on food and food ingredients that will be effective July 1 in accordance with Section 67-6-228. Such rate shall remain effective until the next such reduction.

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by deleting Section 67-6-228 in its entirety and by substituting instead the following:

Section 67-6-228.

(a)

(1) Notwithstanding any provision of this part to the contrary, except as otherwise provided in subdivisions (a)(2) and (d), the retail sale of food and food ingredients for human consumption shall be taxed at the rate of six percent (6%) of the sales price of each single article of food or food ingredient.

(2) The retail sale of the following food and food ingredients shall be taxed at the rate of tax levied on the sale of tangible personal property at retail by the provisions of Section 67-6-202:

- (A) Candy;
- (B) Dietary supplements; and
- (C) Prepared food.

(3) For purposes of this section:

(A) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

(B) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

- (a) A vitamin;
- (b) A mineral;
- (c) An herb or other botanical;
- (d) An amino acid;

(e) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(f) A concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. Section 101.36; and

(C) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller; or

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. "Prepared food" does not include food that is only sliced, repackaged, or pasteurized.

(b) Except as otherwise provided in this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

(c) As used in this section, "food and food ingredients" does not include the following items which shall be taxed at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of Section 67-6-202:

(1) Beer, wine or any other beverage, however designated, that contains alcohol and is regulated pursuant to title 57; or

(2) Cigarettes, cigars or any other product, however designated, that contains tobacco.

(d) In accordance with Section 67-1-114, prior to June 15 each year, the commissioner of revenue shall publish the rate of taxation at which the retail sale of food and food ingredients for human consumption shall be taxed beginning July 1 of such year. Such rate, if any, shall be a percentage of the sales price and shall remain effective until the commissioner's next published rate.

SECTION 3.

(a) The department of revenue is authorized to promulgate rules and regulations as the department may deem necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Notwithstanding the provisions of §§ 4-5-208 and 4-5-209 or any other provision of law to the contrary, the department of revenue is authorized to promulgate public necessity rules and emergency rules to implement the provisions of this act.

SECTION 4. This act shall take effect at 12:02 a.m. on July 1, 2007, the public welfare requiring it.